



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 05-342

Released: February 9, 2005

CONSUMER & GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON TSA STORES, INC. PETITION FOR DECLARATORY RULING ON PREEMPTION OF FLORIDA TELEMARKETING RULES

CG Docket No. 02-278

Comments Due: 30 Days After Publication in the Federal Register

Reply Comments Due: 45 Days After Publication in the Federal Register

On February 1, 2005, TSA Stores, Inc. ("TSA" or "Petitioner") filed a petition for declaratory ruling asking the Federal Communications Commission ("Commission") to preempt a provision of the Florida Statutes as applied to interstate telephone calls.¹ Specifically, TSA requests that the Commission preempt section 501.059 of the Florida Statutes as applied to interstate telephone calls made to residential lines using a prerecorded voice, where the call is made to a person with whom the caller has an established business relationship.² TSA indicates that section 501.059 of the Florida Statutes makes it unlawful for a telephone solicitor to make a telephone sales call to a Florida resident if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a called number.³ TSA asserts that section 501.059, to the extent that it restricts or prohibits the use of prerecorded messages to persons with whom the caller has an established business relationship, is inconsistent with the Commission's rules, when applied to interstate calls.⁴ TSA indicates that this provision conflicts with section 64.1200(a)(2) of the Commission's rules, 47 C.F.R. § 64.1200(a)(2), which, according to TSA, permits the use of an artificial or prerecorded voice to deliver a message without the express prior consent of the called party if the call is made to a person with whom the caller has an established business

¹ See Petition for Declaratory Ruling, CG Docket No. 02-278, filed February 1, 2005 (*Petition*). TSA cites Florida Statutes § 501.059.

² See *Petition* at 1.

³ See *Petition* at 3.

⁴ See *Petition* at 4.

relationship.⁵ Accordingly, TSA requests that the Commission issue a declaration preempting section 501.059(7)(a) of the Florida Statutes.⁶

Pursuant to Sections 1.415 and 1.419 or the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments in this proceeding on or before the 30th day after publication of this *Public Notice* in the Federal Register, and reply comments may be filed on or before the 45th day after publication of this *Public Notice* in the Federal Register. When filing comments, please reference CG Docket No. 02-278. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must send an original and four (4) copies of each filing. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-B204, Washington, DC 20554.

This proceeding shall be treated as a "permit but disclose" proceeding in accordance with the Commission's *ex parte* rules, 47 C.F.R. §§ 1.1200. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex*

⁵ See *Petition* at 3-4.

⁶ See *Petition* at 5.

parte presentations in permit-but-disclosed proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

The full text of this document and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, DC 20554, (202) 418-0270. This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their web site: www.bcpiweb.com or by calling 1-800-378-3160.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format) send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Public Notice* can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/cgb>.

FOR FURTHER INFORMATION CONTACT: Kelli Farmer, Consumer & Governmental Affairs Bureau, Federal Communications Commission, 202-418-2512 (voice), Kelli.Farmer@fcc.gov.

-FCC-